Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

REPLY OF SPRINT NEXTEL CORPORATION TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Sprint Nextel Corporation ("Sprint") hereby replies to the oppositions and comments filed on its petition for reconsideration and clarification of the Commission's *USF/ICC Transformation Order*.[1] As discussed below, the still-growing record on the issue of traffic pumping confirms Sprint's showing, in its December 29, 2011 petition, that the rules adopted by the Commission to curtail traffic pumping schemes must be clarified and tightened in order to make such rules more effective. More effective rules

[1] *Connect America Fund, et al.*, Docket Nos. 10-90, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Nov. 18, 2011), published in 76 Fed Reg. 73830 (Nov. 29, 2011) ("*USF/ICC Transformation Order*").

to curtail traffic pumping schemes and to help ensure just and reasonable rates are in the public interest and Sprint's petition should accordingly be granted.

In its petition, Sprint, like MetroPCS and USTA, recommended revisions to the traffic pumping rules to help ensure that the rates charged for pumped traffic – assuming that such calls are even telecommunications traffic[2] – are in the neighborhood of being just and reasonable, and that LECs engaged in traffic pumping do not retain excessive over-earnings. There is broad support for these clarifications and changes.[3] In particular, several commenting parties agree that the Commission should not allow a LEC that is engaged in traffic pumping to charge more than $.0007 per minute for terminating access.[4] While even this rate will not completely eliminate traffic pumping, it will substantially reduce the financial incentive to engage in such practices; has been used successfully in other situations characterized by disproportionately one-way traffic (and has passed judicial review); and is simpler to administer and avoids many of the controversies associated with the Section 61.38 rate setting process and the price cap LEC benchmarking approach.

Adjusting the maximum rate that may be assessed by LECs that meet the traffic pumping triggers is especially important given the incidence of mileage inflation and the several-year delay in transitioning transport rates to bill-and-keep. Mileage inflation involves increasing the number of local transport miles for which an IXC is billed in order to maximize billed charges, rather than for any legitimate engineering reason. Sprint's data indicate that the average local transport miles for non-price cap LECs

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[2] As noted below and consistent with Sprint's previous advocacy, a call that does not terminate to a legitimate end user is not telecommunications services traffic and is not subject to terminating access charges.

[3] *See, e.g.*, AT&T, p. 41; Comcast, p. 9; CTIA, p. 8; NASUCA, p. 15.

[4] *See, e.g.*, AT&T, p. 43; Comcast, p. 9; CTIA, p. 11.

known to engage in traffic pumping are up to 8 times longer than the Qwest average in Iowa (169 vs. 21 miles), and over 6 times longer in South Dakota (294 miles vs. 47). It is difficult to believe that mileage differences of this magnitude within the same state as between a price cap LEC (which is presumably handling legitimate access traffic) and other LECs known to be engaged in traffic pumping, are coincidental.

If the FCC does not adopt a $0.0007/minute cap in situations where the LEC has met the traffic pumping triggers, it should adopt the following measures to address mileage inflation:

- Disallow transport mileage charges[5] – This is consistent with the operation of the compensation rate structure under 251(b)(5) where rates (*e.g.*, $0.0007) are not mileage sensitive.

- Alternatively, limit mileage charges to the lesser of (a) the benchmark price cap LEC's average local transport miles (in cases in which the LEC's own local transport miles exceed the benchmark price cap LEC's average mileage),[6] and (b) the distance between the nearest tandem switch (of any tandem service provider) and the terminating end office;[7]

- Require the terminating LEC to allow direct interconnection at the terminating end office (including over special rather than switched access facilities) if not already allowed.

These measures would be administratively feasible to implement and would help to address the serious and on-going problem of mileage inflation.

One party opposed Sprint's request that the Commission reduce the time period in which a LEC that has met the traffic pumping triggers must amend its tariff from 45 to 15

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[5] AT&T, p. 42 (LEC that has met the traffic pumping trigger would be allowed to charge only terminating access with no transport).
[6] Sprint Petition, p. 7. A price cap LEC's average local transport mileage can be computed based on information contained in its tariff review plan submitted as part of the annual access tariff filing.
[7] AT&T, p. 42.

days.[8] Such opposition should be dismissed. LECs who are engaging in traffic pumping should hardly be "surprised" when they meet the prescribed triggers, and the process of adjusting their rates does not justify allowing LECs to "continue over-earning for 45 full days."[9]

Hypercube urges that the Commission reject Sprint's proposal to "open a special inquiry any time when the traffic of a competitive carrier exceeds that of the benchmarked LEC."[10] Hypercube has misread Sprint's proposal, which was in fact limited to situations in which the competitive carrier has met the traffic pumping triggers and thus is presumed to be engaged in access stimulation. In its Petition (p. 9), Sprint recommended that "[w]hen a competitive LEC that meets the traffic pumping trigger has traffic volumes that exceed the traffic volumes of the price cap LEC to which it benchmarks, the Commission *will* [rather than may, as stated in the *USF/ICC Transformation Order*] reevaluate the appropriateness of the competitive LEC's rates." A CLEC that has traffic volumes in excess of the benchmarked LEC's, but has not met the triggers, would not be subject to the re-evaluation process. Thus, Sprint's proposal here remains a "narrowly-tailored rule change…"[11] which should be adopted.

Hypercube has also requested that the Commission clarify that, regardless whether a "free service provider" is an end user or not (which is a key factor in determining whether calls pumped to that free service provider are telecommunications

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[8] Northern Valley, p. 6.
[9] CTIA, p. 11.
[10] Hypercube, p. 16.
[11] Hypercube, p. 16.

services traffic subject to access charges), an IXC is obliged to remit payment for "the interstate access services of an intermediate carrier."[12]

Although Sprint agrees that clarification of this issue is warranted, Hypercube's interpretation cannot be accepted. Indeed, it would provide traffic pumpers yet another opportunity to exploit the access rate structure to the detriment of the public interest. In Sprint's view, if a call does not terminate to a legitimate end user (as that term has long been used in the access tariff context), then the call is not telecommunications services traffic and terminating access charges may not legitimately be assessed by either the terminating or the intermediate carrier. In situations in which the intermediate carrier has a direct relationship with a traffic pumping terminating carrier (*e.g.*, the intermediate carrier is owned in whole or in part by the terminating carrier, or receives a net payment of consideration of any kind from the terminating carrier), then the intermediate carrier clearly is not entitled to access compensation for non-telecommunications calls.

Even in situations in which the intermediate and terminating carriers do not have a direct relationship as described above, the intermediate carrier arguably is still not entitled to access compensation for non-telecommunications calls, or at least to compensation based on rates that do not fully reflect all pumped traffic volumes. Leaving aside the dispute over whether the intermediate (*e.g.*, from the IXC point of presence to the access tandem) portion of the call is or is not telecommunications services traffic, there is no question that the intermediate carrier would benefit handsomely from the traffic pumping LEC's actions if the intermediate carrier is allowed to collect charges on the potentially millions of minutes of pumped traffic. If the rates set by the intermediate carrier do not reflect the lower cost per minute resulting from large increases

[12] Hypercube, p. 20.

in traffic volumes, then those rates will not be just and reasonable. The Commission should thus clarify (1) whether any overearnings associated with excessive rates resulting from traffic pumping is a form of "payment of consideration"; and (2) whether a cost study/rate evaluation of intermediate carriers who handle pumped traffic is warranted.

Finally, five parties – all of which have been implicated in traffic pumping disputes – urge that Sprint's petition be denied because Sprint did not provide "new facts."[13] However, there are changed circumstances which warrant reconsideration. Sprint agrees that benchmarking to the price cap LEC's rates was raised in the record below. However, such proposal was raised in conjunction with other elements, such as an outright prohibition on revenue sharing, which, if adopted, would have generated an outcome significantly different than the likely outcome of the rule that was eventually adopted.

In any event, parties opposing Sprint's petition ignore the exception set forth in Section 1.429(b)(3) of the Commission's Rules, which specifies that a petition for reconsideration will be granted if "the Commission determines that consideration of the facts relied on is required in the public interest." This is clearly applicable to Sprint's petition.

In the *USF/ICC Transformation Order,* the Commission explicitly recognized the "adverse effects of access stimulation,"[14] and made it clear that it intended to curtail such activities and to reduce the "inflated profits that almost uniformly make the LEC's interstate switched access rates unjust and unreasonable under section 201(b) of

[13] *See* Global Conference Partners, p. 3; Northern Valley, p. 3; Omnitel and Tekstar Communications, p. 6; and Onvoy, p. 2.
[14] *See, e.g., USF/ICC Transformation Order*, paras. 660 and 662.

the Act."[15] The Commission also expressed its expectation that the trigger approach it adopted in the *Transformation Order* "will reduce the effects of access stimulation significantly…."[16]

Sprint agrees that the reforms adopted by the Commission have the potential to significantly improve the traffic pumping situation, especially to the degree that post-trigger rates charged by traffic pumping LECs are lower than their pre-trigger rates. However, because these new rules allow traffic pumping LECs to continue to charge rates that are well above cost and do not require such LECs to disgorge any excess earnings, these LECs will still have a financial incentive to continue to pump traffic. The reconsideration proposals raised by Sprint (as well as by MetroPCS and USTA) tighten up the rules and eliminate certain loopholes. By making these rules more effective at reducing the incidence of traffic pumping and by moving rates closer to just and reasonable levels, the public interest is well served, consistent with Section 1.429(b)(3) of the Rules.

[15] *Id.*, para. 657.
[16] *Id.*, para. 692.

Respectfully submitted,

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